

Victoria Day Edition

Victoria Day, a federal holiday in Canada celebrated since 1845, was initially intended to honour Queen Victoria, who was also known as the “Mother of Confederation”. Completely on theme, earlier this month, we also witnessed the coronation of His Majesty King Charles III at Westminster Abbey, in London. Apparently, choosing the appropriate food refreshments for such an event is more controversial than we thought...

On a less controversial note, we hope this May Two-Four edition helps refresh your inbox during the unofficial start of summer with summaries of important regulatory reports and future changes.



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1. RegTech 24/7 – OSC Releases First Report on TestLab

This month, the Ontario Securities Commission (OSC) published its first report (the **Report**) on the OSC TestLab, a regulatory sandbox designed to promote innovation and modernize regulation in Ontario’s capital markets by providing a space to test novel and innovative solutions. The inaugural round of tests explored how RegTech could help address two “problem statements” by improving the accessibility of product information and improving information sharing and enhanced client interactions.

To explore how RegTech can help address these challenges, the OSC invited seven companies to test solutions within the TestLab model, affording an opportunity for real-world testing and the

chance to receive data-driven feedback. The tests involved over 50 investors, 50 investment advisors, two compliance staff as well as various subject matter experts from across the OSC.

Problem Statement 1 – Accessibility of Product Information

Particularly since the Client Focused Reforms, it is imperative that advisors understand all facets of the products they offer including their structure, features, risks, initial and ongoing costs, and the impact of those costs. A thorough Know Your Product (**KYP**) process is a prerequisite for a well-informed and accurate suitability determination. Feedback from the tests found that RegTech could help improve advisors' workflows, better understand the wide array of products available, and assist with sharing information and explaining recommendations to clients. Specifically, the first round of tests found that:

- Product information/comparison tools can help advisors monitor and understand portfolio fluctuations to assess recommendations and support suitability reviews.
- Automation and integration of product platforms with client information, onboarding, trading, or reporting systems can reduce friction in an advisor's daily workflows.
- Product information tools that incorporate additional data points (i.e., comparable securities, performance benchmarks, advanced risk metrics) and solutions that create highly customized reports can help explain recommendations to clients.
- Solutions which include clear, simple, and intuitive visualizations for portfolio performance and benchmarking make the underlying data easier for advisors to understand and explain to clients.

Problem Statement 2 – Improved Information Sharing & Client Interactions

As the KYC process becomes increasingly wholistic, including understanding a client's personal and financial circumstances, RegTech solutions can offer effective and efficient methods to gather and maintain fulsome information to satisfy this critical requirement. Particularly for firms who still deploy a manual KYC process, RegTech solutions can offer a number of benefits including improving the speed and accuracy of client onboarding, the automating of client information refreshes, and centralizing records to improve document accessibility. One particular solution which was received positively by both advisors and clients was a secure system wherein clients could update their own information. This sort of solution has obvious appeal, so long as advisors and clients remain cognizant of how those updates can impact product suitability determinations.

In addition to improving the Know Your Client (**KYC**) process, the initial testing revealed meaningful ways in which RegTech could improve communications between advisors and clients. For instance, RegTech solutions can for instance increase client "buy-in" by using novel approaches to facilitate discussions, minimize errors through automation by pre-populating fields and showing clients their prior responses as a comparison, and by allowing advisors to group related accounts for aggregated review and management. Solutions with these features received positive feedback during the testing.

From these initial tests, the OSC identified some "key insights" which indicate that RegTech can help support registrants and clients through improved information sharing, more accessible product information, more engaging risk assessments and knowledge building to help facilitate

more informed decision-making, and an overall improvement in efficiency, quality, and variety in our capital markets. However, the Report notes that RegTech faces a range of challenges from development and testing hurdles, to supporting an evolving regulatory framework which requires innovators to build agile solutions that support registrants while providing accurate, explainable, and interpretable results.

As a takeaway, the OSC maintained its commitment to continue its work in the following ways:

Supporting the RegTech Ecosystem – the Report provided feedback that participants found real value in the opportunity to meet with other stakeholders in the space to discuss RegTech solutions. In support of this, the OSC has endeavored to continue to host periodic RegTech sessions to keep this dialogue going.

Improving Regulation Accessibility – participants in this round of testing found it challenging to craft solutions which were reliably responsive to the changing regulatory framework in light of how regulations are published. National Instruments and Companion Policies for example are currently published in PDF format making them difficult for computers to decipher. In response to this sentiment, the OSC advised that it would explore potentially making OSC rules machine-readable to support automation in developing and updating solutions when necessitated by regulatory change.

Building Support for Testing – another difficulty expressed by testing participants was a general lack of willingness on the part of market participants to engage with and test novel solutions, even under the TestLab model. In response, the OSC advised that it will be reaching out to registrants to better understand their pain points and explore why they may be reluctant to test new solutions.

Shaping/Sharing RegTech Standards – the setting of domestic and international standards was identified as a key development to help support RegTech innovation and adoption. To this end, the OSC advised it would remain active in the Global Financial Innovation Network (**GFIN**) to support financial innovation and explore perspectives that can help Ontario's RegTech stakeholders and registrants.

2. What's on the AMF's Agenda this Year? 2023-2024 Annual Statement of Priorities Published

In 2021, the Autorité des marchés financiers (**AMF**) released its 2021-2025 Strategic Plan, which declared the AMF's four key guiding principles (called **orientations** in the plan) that will inform its decisions and actions for the four-year period.

On April 27, 2023, the AMF set out its key initiatives for the period from April 1, 2023, to March 31, 2024, for each of its four orientations, in its Annual Statement of Priorities (**SoP**).

Specifically, for 2023-2024, the AMF intends to target, among others, the following key initiatives for each respective orientation:

Orientation 1 - A proactive regulator that is relevant to consumers in an ever-changing environment:

Under Orientation 1, the AMF aims to focus on continuing to enhance services to assist financial consumers, promote and provide financial education to the public, and target its oversight,

supervision and enforcement capabilities on key areas of concern.

Specifically, the AMF aims to continue to consolidate the various public registers of individuals and firms authorized to practice through a registration with the AMF into a single register, adopt a regulation to streamline the complaint process for financial consumers, and to further its commitment to combating financial mistreatment of older and vulnerable clients by updating certain resources for market participants. Financial education efforts include holding a 10th Financial Education Day and continuing its public awareness campaigns on fraud prevention and cryptoassets. As part of its oversight, supervision and enforcement capabilities, the AMF aims to continue its work in understanding and addressing the digital transformation of the financial industry by publishing a framework for the use of artificial intelligence in the industry with educational materials for consumers. It will also continue its work in the social media and “finfluencer” space, including optimizing its approach for detecting illegal product offerings on social media.

Orientation 2 - An influential regulator supporting Quebec’s financial sector:

Under Orientation 2, the AMF takes aim at issues of compliance burden, upcoming regulatory changes, initiatives in the fintech space and assessing the digital transformation of industry participants, and environmental, social and governance (ESG) issues.

As part of its efforts to reduce compliance burden, of note to investment fund reporting issuers, the AMF in collaboration with the Canadian Securities Administrators (CSA) aim to finalize the project to modernize the prospectus filing model, through the proposed amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and related instruments, which will allow investment funds in continuous distribution to file a prospectus every two years rather than on an annual basis. For non-investment fund issuers, the AMF and the CSA intend to finalize the draft amendments to National Instrument 51-102 *Continuous Disclosure Obligations*, which are aimed at changing the annual and interim filing requirements, specifically targeting and streamlining the disclosure requirements for the management discussion and analysis and the annual information form. Other upcoming regulatory initiatives include the changes to enhancing total cost reporting to investors of investment funds and segregated funds, and the AMF’s aim to continue to work with the CSA to determine whether amendments to National Instrument 81-105 *Mutual Fund Sales Practices* are required following the ban on deferred sales charges and the coming into effect of the Client Focused Reforms. In addition, the AMF also aims to consult with market participants and fintech companies to determine opportunities for innovation in the financial sector. With respect to ESG-related initiatives, the AMF intends to create a separate unit which will be dedicated to the ESG-space – a first for a Canadian securities regulatory body. Other initiatives include finalizing proposed National Instrument 51-107 *Disclosure of Climate-related Matters*, which will impose disclosure requirements on non-investment fund reporting issuers and beginning work to determine how to regulate ESG ratings providers.

Orientation 3 - A high-performing regulator in the pursuit of its mission:

Under Orientation 3, the AMF takes aim at continuing to develop its strategy around the use of its data to enhance operational performance, enhance its risk governance framework and implement an improved risk management process, and modernize its information systems. Other initiatives include the AMF and CSA’s ongoing work involving SEDAR+, which in future phases will involve

replacing the System for Electronic Disclosure for Insiders (**SEDI**) and the National Registration Database (**NRD**).

Orientation 4 - A regulator committed to its human capital:

Under Orientation 4, the AMF intends to implement a diversity, equity and inclusion program, enhance its development programs aimed at its managers, and define and implement its employer brand, designed to attract and retain talent. It will also continue its work to implement a new hybrid work arrangement, responsive to its employees' needs.

A full list of the items included in the SoP can be accessed on the AMF's [webpage](#).

3. It's Business Plan Season – FSRA's Annual Plan

The Financial Services Regulatory Authority of Ontario (**FSRA**) recently released its annual business plan for its 2023-2026 activities (the **Business Plan**). The Business Plan includes reference to FSRA's 2023-2024 statement of priorities which was the subject of a consultation last fall (and described in our bulletin [here](#)), and stakeholder feedback was incorporated into the Business Plan.

The Business Plan references four overall priorities: strengthen consumer focus, modernize systems and processes, enable innovation and enhance FSRA's talent management framework and strategy. Our brief summary below describes FSRA's specific priorities as they impact the mortgage brokerage sector and financial planners and financial advisors under FSRA's Financial Professionals Title Protection Framework.

With respect to the mortgage industry, the Business Plan notes that in the fiscal year 2021-22, FSRA regulated approximately 1,240 mortgage brokerages, 3,000 mortgage brokers, 16,000 mortgage agents and 240 mortgage administrators in Ontario. In connection with its plan to continue to promote high standards of governance and business conduct, FSRA intends to consult on best practices to improve the effectiveness of the principal broker's role in contributing to a strong business conduct culture and ensuring the fair treatment of consumers. It is also FSRA's intention to develop a supervisory engagement model for mortgage brokerages and administrators whose conduct has the most impact on consumers and the industry's reputation, to allow for more effective allocation of supervision resources. FSRA will also continue its work with respect to individual proficiencies, by updating the broker and agent licensing education courses, enhance continuous education requirements and consult on best practices for the suitability of mortgage recommendations for consumers. The latter consultation, in particular, is aimed at ensuring consumers receive mortgage advice that is suitable to their specific circumstances and needs.

Under the Financial Professionals Title Protection Framework, as of the date of this publication, FSRA has approved four credentialing bodies and nine credentials. To meet the priority of ensuring the effectiveness of the framework for financial planners/financial advisors, FSRA intends to, among other things, assess credentialing bodies to ensure that they meet minimum standards, appropriately share information, communicate requirements with credential holders, and have the necessary policies and procedures in place to protect consumers. Staff will also work with the Ministry of Finance and other stakeholders to identify and implement any required changes to rules or legislation to enhance national harmonization of the framework.

4. BCSC Annual Report Card Illuminates Issues with Conflicts

The British Columbia Securities Commission (BCSC) released its [Annual Compliance Report Card \(Report Card\)](#) on May 25th summarizing the findings from its 2022 compliance program review of B.C. based portfolio managers, investment fund managers, and exempt market dealers. They conducted 27 reviews, of which 17 were part of the CSA Client Focused Reforms – Conflicts of Interest sweep. Our summary below focuses on the compliance deficiencies relating to conflicts of interest (COI).

A. Top Conflict of Interest Deficiencies

The top COI deficiencies found by staff at the BCSC related to referral arrangements, compensation practices and gifting. In each situation, the conflict created an incentive for the registrant (firm or individual) to put their interest ahead of their clients' interests and therefore the conflict was almost always material.

I. Referral arrangements

- **Failure to identify material COI.** Some firms failed to identify any material COIs arising from their paid referral arrangements and incorrectly disclosed to clients that no material COIs existed. Remember, material COIs almost always exist in paid referral arrangements as firms have an incentive to accept referred clients (to grow their assets under management and management fee revenue) and referral agents have an incentive to refer clients (to receive referral fees).
- **Failure to identify that a service fee collection arrangement is a referral.** Some firms failed to recognize a service fee collection arrangement as a referral arrangement. Under this arrangement, a financial planner refers a client to a registered firm for its portfolio management services, and the firm deducts both financial planning fees and portfolio management fees from the client's account, with the former being remitted to the financial planner. While the monetary payment is not by the registrant, the firm benefits from increased assets under management and management fees and the financial planner benefits from receiving fees.
- **Failure to provide meaningful disclosure.** While most firms disclose their referral arrangements to their clients, some failed to describe:
 - the **nature and extent** of the conflict when the registrant's interests (firm or individual) do not align with the client's interests,
 - the potential **impact on and risk of harm** to the client that the conflict could pose if the registrant (firm or individual) placed their interests before their client's interests, and
 - the **controls** that the firm uses to address the conflicts.

II. Compensation practices

- **Failure to identify material COI.** Some firms failed to identify the following as material COIs relating to compensation for registered employees:
 - incentives that are based on revenue generation, sales and revenue targets (including annual awards, promotions, and opportunities to become a partner of the firm),

- negative consequences for failing to meet sales or revenue targets,
- different commission rates for certain products and/or certain clients, for example, depending on the source of the clients (such as referred clients), and
- repayment of commission advances when a quarterly sales target is not met.

It is important to remember that the existence of different commission rates for products or client source also creates an opportunity to favour clients who provide the highest percentage commissions.

- **Failure to provide meaningful disclosure.** Some firms failed to disclose the material COIs in their compensation practices to clients. Other firms provided disclosure but lacked details as to how the conflicts relating to compensation would impact the clients' interests. Remember, while providing disclosure is necessary when a firm has material compensation conflicts, it may be insufficient to address these conflicts by disclosure only.

III. Gifting

- **Failure to identify material COI.** Some firms failed to identify that gifts to and from clients can result in a material COI.
- **Failure to address material COIs.** Some firms failed to address material COIs from gifting because they did not monitor and track the gifts and entertainment that registered employees receive from or provide to their clients. If gifts to clients are allowed, firms should monitor and track them to ensure gifts are not material and frequent.
- **Inadequate policies and procedures.** Policies and procedures on gifts to clients were either missing or insufficient.

B. Common mistakes – process for dealing with COIs

Approximately 50% of the COI deficiencies relate to the firms' process in dealing with COIs, which include mechanisms to adequately identify, assess, address, and/or disclose material COIs. These are the most common mistakes discussed in the Report Card.

- **Failure to identify COI.** Some firms responded that they had no material COIs in their business as they failed to recognize that personal trading, outside activities, and fair allocation of investment opportunities represent material COIs.
- **Failure to adequately assess and address COIs.** Some firms identified COIs but incorrectly assessed them as immaterial and therefore did not institute controls to manage them.
- **Failure to adequately disclose COIs.** Firms did not clearly describe: **(i)** the nature and extent of the COI, **(ii)** the potential impact on and risk that the COI could pose to the client, and **(iii)** how the COI has been, or will be, addressed.

In addition, some firms:

- included material conflicts in their internal COI documents but failed to disclose them to clients,
- provided boiler plate COI disclosure to clients that included conflicts that did not exist at the firm, or
- provided disclosure that was not meaningful to clients.

C. Common mistakes – inadequate policies and procedures and COI records

Approximately 50% of the COI deficiencies relate to the lack of policies and procedures for specific conflicts, such as gifting and referral arrangements. Some firms:

- had no written policies and procedures to identify, assess, and respond to COIs,
- appropriately identified material COIs when responding to the sweep but did not address the COIs that were identified in their policies and procedures manual, or
- had a COI matrix but failed to provide the information to their employees.

Next steps

If you would like assistance assessing whether your policies and procedures address the issues identified in the Report Card, which are also of concern to other members of the CSA, we would be [happy to help](#). We can also assist with training your employees on specific aspects of the COI requirements that apply to your firm.

In Brief

Not a Fee Holiday – FSRA Consults on Fee Rule Once Again

The Financial Services Regulatory Authority of Ontario (**FSRA**) is proposing further amendments to Proposed Rule 2022-001 – Assessments and Fees (**Fee Rule**) in order to reduce variable annual fees payable by the Canadian Investment Regulatory Organization (**CIRO**) (currently referred to as the New Self-Regulatory Organization of Canada) once it becomes a credentialing body under FSRA's title protection framework. The exemption would apply to any self-regulatory organization (**SRO**) that has received a recognition order from the Ontario Securities Commission (**OSC**).

As the OSC already provides oversight of CIRO's activities, FSRA, the OSC and CIRO wish to ensure that CIRO's future status as a credentialing body does not result in regulatory duplication. FSRA believes that an entity's fair share of costs does not include costs for oversight already being provided by another regulator. A new methodology for the variable assessment that an SRO credentialing body would pay would be added to the Fee Rule, but an SRO credentialing body would still be required to pay the flat rate element of the annual assessment, and its share of the proposed start-up cost fee.

The formula to calculate the variable assessment element for credentialing bodies, other than an SRO, will be modified so that an SRO credentialing body's credential holders are not counted when determining the total number of approved credentials issued to individuals by all approved credentialing bodies.

The consultation is open until June 2.

An Extra Long Weekend - SEDAR+ Filing Extensions Granted

The Canadian Securities Administrators (**CSA**) members are providing exemptions from a number of filing requirements which are connected to the switch over to SEDAR+. As the switch over occurs, SEDAR+ will be unavailable from June 9 to at least June 13. In effect, the blanket orders from member regulators will provide an extension to file or deliver documents required to be sent through SEDAR+ during those dates. The documents must be filed or delivered through SEDAR+ no later than 2 business days after the cutover end date, being the earlier of the date on which

SEDAR+ becomes available and June 16, 2023. In exceptional circumstances, filers will be permitted to transmit documents through other means during this period. For clarity, the blanket orders do not relieve filers from any applicable requirements to issue a news release or deliver documents to security holders.

OSC Investor Advisor Panel Report Focuses on Citizen (AKA Investor) Protection

On May 30, 2023, the Ontario Securities Commission's Investor Advisory Panel (IAP) released its report with respect to its activities in 2022 (the **IAP Report**). The IAP's mandate is to solicit and represent the views of investors on the OSC's policy and rule-making initiatives. It is noted in the IAP Report that the IAP held 11 meetings with OSC staff, made eight submissions or reports on proposed policies (four to the securities regulators and four to other bodies), and held 22 meetings with outside organizations.

The IAP Report focused on a number of areas where investor protection could be enhanced, including by:

- Granting binding decision making authority to the Ombudsman for Banking Services and Investments (**OBSI**) and mandating the use of OBSI as the single, fully integrated dispute resolution service for banking and investment related complaints;
- Providing investors with accurate information about the risks of the crypto asset market and clear information about the costs of products and services they purchase; and
- Using technology (such as what has been proposed in various access equals delivery proposals described [here](#)) to provide information to investors in an efficient and environmentally responsible manner and in a way that reduces costs and unnecessary burdens for issuers.

For 2023, the IAP intends to focus on continuing to review the impact of disruptive technologies for retail investors, as well as encouraging the OSC to prioritize investor protection within its multi-branched mandate.

Ensuring Your Audits are Regal – FSRA Releases Proposed Guidance for Mortgage Administrators

The Financial Services Regulatory Authority of Ontario (**FSRA**) has released [proposed guidance](#) that speaks to its expectations for mortgage administrators when complying with their financial reporting requirements. Mortgage administrators are already required to have a licensed public accountant independently review their financial statements and operations on an annual basis, and to file the financial statements and findings with FSRA. The proposed guidance explains a variety of concepts in connection with this obligation, including the appropriate form and content of the auditor reports and permitted licensed public accountants. The guidance would also note that FSRA expects the auditors to be familiar with the applicable requirements for mortgage administrators under the law in relation to their reports. The consultation closes on June 16, 2023.

Reminders

Training Opportunities – Avoid the Fireworks!

As we approach the end of the second quarter, it is a good time for registered firms to reflect on whether they have completed appropriate training for employees. Under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)*, firms

are expected to provide training on specific topics. At a minimum, firms must provide training on conflicts of interest (COI), know your client (KYC), know your product (KYP) and suitability determination obligations during the year. As noted in our article above regarding the BCSC's annual Compliance Report Card for 2022, COI was one of the top areas where the most deficiencies were found. The BCSC and other securities regulators can impose significant administrative penalties for contraventions. The Ontario Securities Commission has also signaled in recent annual reports and in their Statement of Priorities for 2023 that COIs are high on staff's radar.

We would be happy to speak with you about all of our training options, including in particular with respect to COI, KYC, KYP and suitability. We can also provide training on topics such as anti-money laundering, sales communications and general compliance obligations. Please feel free to [reach out to us](#) to discuss in more detail.

Long Live SEDAR+ Onboarding

As last mentioned in both our [February 2023](#) and [March 2023](#) bulletins, SEDAR+ is expected to launch on June 13, 2023. While the deadline for onboarding filers needing access to the system on the first day it is operational has passed, issuers will still be permitted to onboard using a slightly different process post implementation. Issuers, such as investment funds that file reports of exempt distribution on an annual basis, will need to file the forms to use SEDAR+ well in advance of the filing deadlines. Our experience to date has shown that the completion and submission of the forms may take some time and it is important to ensure that your filings are not late as a result of an unexpected onboarding delay. If you need assistance with this process post June 13, please do not hesitate to [contact us](#).

BLG's Resource Corner

Our colleagues at BLG have provided the following insights we thought might interest our readers:

- [CSE Creates a Senior Tier](#)
- [Emerging technologies series: Regulating artificial intelligence in Canada, the U.S. and Europe](#)
- [Canada's New SRO: A new name, enforcement and policy focus](#)

For more information, please visit the BLG [website](#).

Practical Advice • Efficient Service • Fixed-Fee Plans

AUM Law focuses on serving the investment management sector with legal and consultancy services related to regulatory compliance. AUM Law provides its registrant clients with annual fixed-fee regulatory compliance support plans and related offerings. It provides registrants with an efficient, innovative approach to help manage their legal and regulatory compliance obligations.

BLG + AUM Law

AUM Law has been part of BLG since May 2021 and is integrating with BLG's suite of alternative legal services known as BLG Beyond.

This bulletin is an overview only and it does not constitute legal advice. It is not intended to be a complete statement of the law or an opinion on any matter. No one should act upon the information in this bulletin without a thorough examination of the law as applied to the facts of a specific situation.

